

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Nicholas Knopick,

Plaintiff,

v.

Philip A. Downey,

Defendant.

No. 1:09-cv-01287
Judge Sylvia H. Rambo
Civil Action – Law
JURY TRIAL DEMANDED

**PLAINTIFF'S MOTION FOR LEAVE TO FILE AFFIDAVIT UNDER SEAL AND
EX PARTE IN RESPONSE TO THE COURT'S MARCH 27, 2014 ORDER**

Pursuant to Local Rule of Civil Procedure 5.8, which incorporates the procedures of Local Criminal Rule 49, Plaintiff Nicholas Knopick, by and through his undersigned counsel,¹ hereby moves this Court for an Order granting Mr. Knopick leave to file an affidavit under seal and *ex parte* in response to the Court's March 27, 2014 Order regarding the March 3, 2014 and March 24, 2014 Motions to Withdraw as Attorney filed by Joshua Autry. In support of this Motion, Plaintiff avers as follows:

1. On March 3, 2014, Mr. Knopick's current counsel, Joshua M. Autry of Clymer, Musser & Conrad, P.C., filed a Motion to Withdraw as Counsel in the above-referenced matter. (*See* Dkt. #141.)

2. In the Motion to Withdraw, Mr. Autry represented to the Court that he had been advised through independent counsel that Mr. Knopick had terminated his firm as counsel. (*Id.* at ¶ 1.)

¹ Mr. Knopick's undersigned counsel, Julie B. Negovan, has entered her appearance for the limited purpose of filing the instant Motion and its attendant affidavit on behalf of Mr. Knopick.

3. Mr. Autry further represented to the court that he and his firm had “irreconcilable differences with Mr. Knopick and have had a complete breakdown in the attorney-client relationship, requiring us to speak with Mr. Knopick only through independent counsel.” (*Id.* at ¶8.)

4. On March 4, 2014, the Court issued an Order in response to Mr. Autry’s Motion to Withdraw, directing Plaintiff to submit an affidavit, no later than March 10, 2014, indicating: (1) whether he has terminated Mr. Autry’s representation; (2) whether he has obtained new counsel who will enter an appearance on his behalf and be prepared to try the case in the May 2014 trial term or whether he will proceed to trial *pro se*; and (3) that he understands the Court will not extend any applicable deadlines, including the trial date, regardless of the status of his representation. (*See* Dkt. #142.)

5. On March 10, 2014, Mr. Knopick filed a Motion for Leave to File Affidavit Under Seal and *Ex Parte* in Response to the Court’s March 4, 2014 Order because the requested affidavit necessarily involved the disclosure of attorney-client privileged communications between Mr. Knopick and his counsel, including Mr. Autry. (*See* Dkt. #148.)

6. On March 11, 2014, the Court granted Mr. Knopick’s Motion and the attendant affidavit was filed under seal and *ex parte*. (*See* Dkt. #150.)

7. On March 12, 2014, the Court denied Mr. Autry’s March 3rd Motion to Withdraw as Attorney. (*See* Dkt. #151.)

8. On March 24, 2014, Mr. Autry filed a Second Motion to Withdraw as Attorney. (*See* Dkt. #152.)

9. On March 27, 2014, the Court issued an Order in response to Mr. Autry's Second Motion to Withdraw as Attorney, directing Mr. Knopick to submit an affidavit, "which he is invited to file under seal," indicating: (1) whether he has terminated Counsel's representation; (2) whether he has obtained new counsel who will enter an appearance on his behalf and be prepared to try the case in the May 2014 trial term or whether he will proceed to trial pro se; and (3) that he understands the Court will not extend any applicable deadlines, including the trial date, regardless of the status of his representation. (*See* Dkt. #159.)

10. The Court further ordered Mr. Knopick to respond to any paragraph contained in Counsel's March 24, 2014 declaration to which he takes exception, explaining the basis for his disagreement. (*Id.*)

11. The requested affidavit necessarily involves the disclosure of attorney-client privileged communications between Mr. Knopick and his counsel, including Mr. Autry, seeking legal advice and providing information in connection with attorney work product.

12. Additionally, the affidavit discloses information that may be prejudicial to Mr. Knopick in revealing attorney work product and communications relating to strategy in connection with the handling of this case.

WHEREFORE, Mr. Knopick respectfully requests that the Court grant this Motion and enter an Order allowing Mr. Knopick to submit the requested affidavit to the Court under seal and *ex parte*.

Dated: April 4, 2014

Respectfully submitted,

KUTAK ROCK LLP

BY: /s/ Julie B. Negovan
Julie B. Negovan, Esq.
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50 South Sixteenth Street
Philadelphia, PA 19102
(215) 299-4384

Attorney for Plaintiff Nicholas Knopick

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule of Civil Procedure 7.1, I hereby certify that, on April 4, 2014, my colleague, Melissa E. Scott, Esq., contacted Joshua Autry and counsel for Defendant Philip A. Downey, Robert W. Sink, by email (*see* attached Exhibit A) to seek counsels' concurrence with respect to the filing of the foregoing Plaintiff's Motion for Leave to File Affidavit Under Seal and *Ex Parte* in Response to the Court's March 27, 2014 Order. Mr. Autry had no objection to the Motion. Mr. Sink did not respond to the email.

Dated: April 4, 2014

BY: /s/ Julie B. Negovan
Julie B. Negovan, Esq.
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(215) 299-4384

Attorney for Plaintiff Nicholas Knopick

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April 2014, I served a true and correct copy of the foregoing Plaintiff's Motion for Leave to File Affidavit Under Seal and *Ex Parte* in Response to the Court's March 27, 2014 Order on the following via email:

Joshua M. Autry
Clymer, Musser & Conrad, P.C.
408 W. Chestnut Street
Lancaster, PA 17603
josh.autry@clymerlaw.com

and

Robert W. Sink
Law Offices of Robert W. Sink
1600 JFK Blvd., Suite 503
Philadelphia, PA 19103
rsink@sinklawoffices.com

Attorney for Defendant Philip A. Downey

I did not serve the Affidavit to be filed under seal and *ex parte* on Messrs. Autry and Sink.

Dated: April 4, 2014

BY: /s/ Julie B. Negovan
Julie B. Negovan, Esq.
KUTAK ROCK LLP
Two Liberty Place, Suite 28B
50 South Sixteenth Street
Philadelphia, PA 19102
(215) 299-4384

Attorney for Plaintiff Nicholas Knopick

Scott, Melissa E.

From: Scott, Melissa E.
Sent: Friday, April 04, 2014 8:36 AM
To: rsink@sinklawoffices.com; josh.autry@clymerlaw.com
Cc: Negovan, Julie B.
Subject: Knopick v. Connelly, et al. - Motion for Leave to File Under Seal

Importance: High

Counsel:

We are filing a Motion for Leave to File an Affidavit Under Seal and Ex Parte today on behalf of Mr. Knopick in response to the Court's March 27, 2014 Order. Please confirm ASAP whether you concur in the filing of the Motion or have any objections to the filing of the Motion. Thank you.

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